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The Mississippi Choctaw Claim.

Washington, D. C., January 21, 1914.

Statement of the delegates of the Mississippi, Alabama and Louisiana Choctaw Council with reference to the following subjects:

First. The nature of their claims.

Second. The proposed legislation now pending before Congress.

Third. Their need for relief.

Fourth. The approval of their general contract.

First. The Nature of Their Claims.

From the time the commission appointed under the act of August 23, 1842, completed its work, in 1845, no roll of Mississippi Choctaws who remained in Mississippi under article 14 of the treaty of 1830 was made or kept until after the passage of the Curtis act of June 28, 1898, section 21 of which provides that:

> "Said commission shall have the authority to determine the identity of Choctaw Indians claiming rights in the Choctaw Nation under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, and they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and make report to the Secretary of the Interior."

The names of Mississippi Choctaws who received patents under article 14 of the treaty of 1830 and those to whom scrip was issued under the supplemental provision of the act of August 23, 1842 (5 Stat., 513), are found on pages 3 to 26 of H. R. Doc. 898, 61st Congress, 2d session.

Pursuant to the authority of section 21 of the act of 1898 the Dawes Commission conducted hearings in the State of Mississippi, terminating on February 24, 1899, and presided over by Commissioner McKennon. From testimony taken by him the commission prepared a report and roll dated March 10, 1899, containing the names of 1923 individuals. Concerning these the report states:

> "Of these, there are two families, and probably a few other persons, who are mixed bloods, while all the others are full-blood Choctaw Indians. The commission finds that only a few families of these Choctaws own land, while all are poor, ignorant and helpless—in almost every case susceptible of imposition and wrong at the hands of the white man, but remarkably peaceable, law-abiding and industrious. It is a rare incident that any one of these Choctaws is charged with the commission of a crime."

Of the 1,923 persons identified as Mississippi Choctaws on this report of March 10, 1899, also known as the McKennon Roll, *less than half,* or 880, *are now on the final citizenship rolls* of the Choctaw Nation in Oklahoma; 1,063 are *not* on these rolls and are now claimants to an interest in the Choctaw estate. Of this number 538 individuals were never placed on any other roll of identified Mississippi Choctaws, while the remaining 525 individuals, after re-examination by the commission during 1901 and 1902, were included in the rolls of identified Mississippi Choctaws approved by the Secretary of the Interior on February 14, 1903.

In addition to the foregoing there were about 500 full-blood Choctaws who did not appear before Commissioner McKennon in 1899, but who made their applications and proof before the commission in 1901 and 1902, and were there-

after identified on what was known as the Roll of Identified Mississippi Choctaws, approved February 14, 1903, by the Secretary of Interior, but who failed to remove within six months thereafter and are therefore not on the final citizenship roll of the Choctaw Nation.

As there were 1,643 identified Mississippi Choctaws who removed and are now Choctaw citizens, it appears that substantially one-half of the Indians identified as Mississippi Choctaws entitled under article 14 of the treaty of 1830 are denied their rights. This number is reduced to about 1,200 by deaths occurring during the period of eleven to fourteen years which has since elapsed. The classes of Mississippi Choctaws who have been identified but not finally enrolled are substantially as follows:

First. 538 Mississippi Choctaws identified on the McKennon Roll but not identified on the roll of 1903.

Second. 525 Mississippi Choctaws on the McKennon Roll of 1899 and also on the roll of identified Choctaws approved February 14, 1903.

Third. About 500 other Mississippi Choctaws on the roll of identified Mississippi Choctaws approved in 1903 and supplemental additions in 1904-5-6.

The Claims of the 538 Mississippi Choctaws on the McKennon Roll but Not on the Approved Rolls.

The records show that these Indians were enrolled by the Dawes Commission after a full hearing of their claims; that the Dawes Commission discharged its duty under the act of 1898, section 21, by reporting a list of names to the Secretary of the Interior; that the Secretary of the Interior, in a promulgated decision, held that the matter of the approval of this roll would be suspended until the submission of the general rolls of the Choctaw Nation (decision of June 15, 1899). That on November 27, 1901, the Dawes Commission requested permission to withdraw the McKennon Roll and

report of March 10, 1899; that the Department on January 9, 1901, and February 7, 1901, refused permission to withdraw the report and roll, returning to the commission one of the duplicate copies with instructions not to make any changes, "but if it should appear that any of the names should be stricken from said schedule the commission should make a report to the Department embodying therein such suggestions and recommendations as the commission deems appropriate for such action as the Department may consider necessary under the circumstances;" that on February 27, 1907, without any further evidence or consideration of these cases, the Acting Commissioner of Indian Affairs recommended the Department that "in order to finally dispose of this roll so that there may be no further question as to whether the people whose names appear thereon should be allowed to share in the distribution of the lands and funds of the Choctaw and Chickasaw Nations" it should be disapproved, and on March 1, 1907, the Assistant Secretary of the Interior, in accordance with that recommendation, disapproved the roll.

All of these facts are matters of record and the names of the 538 individuals whose identification and rights were set aside and forfeited by this action of the Assistant Secretary of the Interior on March 1, 1907, without notice, without a hearing, and with no right or time for appeal or review, except in Congress, are contained in the letter dated December 30, 1911, with enclosures, from the Secretary of the Interior to the Honorable John H. Stephens, chairman of the Committee of Indian Affairs of the House of Representatives.

Before discussing in detail the action of the Department, briefly outlined above, we desire to quote the views of the Honorable Robert L. Owen with reference to this treatment of these Indians as expressed in the brief filed in the Court of Claims on his behalf on April 20, 1913, in which the following statement is found:

> "It will thus be seen that there was a secret underhanded opposition to the Mississippi Choctaws, be-

cause it must be remembered that this roll of identification made by the Dawes Commission March 10, 1899, and submitted by 'report to the Secretary of the Interior' was *pigeon-holed for eight years and then disapproved without notice.* This policy was ruinous, for many of the Mississippi Choctaws, full-blood Indians, relied upon the Interior Department to advise them when their identification was complete, so that they might move to the Choctaw country with safety. The Interior Department held those identified on this roll of 1899 in ignorance and uncertainty until it was too late to move and then disapproved the roll. The gross injustice of this procedure is manifest and no pretense can be made that the controlling officials of the Interior Department really entertained any genuine sympathy with the enrollment of the poor full-blood Mississippi Choctaws.

"The Secretary *also refused to approve any plan proposed to finance the removal of the Mississippi Choctaws* who were too poor to remove themselves, although plaintiff Owen urged that it be done, from 1900 to 1903."

* * * * * * *

"The report declares that the Mississippi Choctaws were *poor, ignorant and helpless.* This report in behalf of the full-blood Mississippi Choctaws, signed and submitted by the Dawes Commission, *was disapproved eight years later* by Mr. Secretary Hitchcock on March 4, 1907, *without notice or warning,* so that no person upon this roll ever knew for eight years whether he was so far identified as to be entitled to remove as an identified Mississippi Choctaw, and finally the entire schedule was rejected without notice."

These 538 individuals, if identified, were entitled under then existing law to remove to the Choctaw Nation and receive estates worth in the aggregate about $5,000,000. The Department knew their helpless condition. It knew they were full-bloods, and that the only change in the law regarding their identification had been the sweeping provisions of section 41 of the act of July 1, 1902, to enroll all full-bloods.

It had no evidence before it other than the report of the commission that they were entitled to identification; that they were full-bloods, and that the majority were children. Yet the Secretary disapproved their enrollment, for the stated purpose of forfeiting their right to receive an estate of $5,000,000.

It is true that the Secretary in taking this action states that "the Indian Office considers that in view of various changes made in the law since the date of this report or roll that it no longer has any validity." We challenge any one to point to a single change in the law having any bearing upon the identification or enrollment of these Indians other than the act of 1902, expressly recognizing the full-blood rule of evidence followed by the commission in preparing the McKennon Roll and confirming their rights to enrollment.

This action of the Department, on March 1, 1907, when thousands of cases were being acted upon without time for consideration by the responsible officials, would have been impossible under other circumstances, with opportunity to examine the records of the Department and to appreciate the provisions of the act of 1902 directing the enrollment of the full-bloods in Mississippi.

Second and Third Classes Barred by Failure to Remove.

We only desire to present briefly two phases of the claim of these Choctaws. Their identity as Choctaws entitled under article 14 was settled ten years ago. They failed to remove within the time required by the act of July 1, 1902, and the only questions are—

1. Was that requirement as contained in the act fair or proper?

2. Were they entitled to Government aid which they failed to receive, and were they in fact prevented from remaining by the agents of the Government?

The first question requires the consideration of many facts—the policy of Congress, the known inability of these Indians to remove, the continuing force of their agreement expressed in article 14 of the treaty of 1830, to the termination of which they have never assented.

The second question can only be answered in the affirmative.

In every removal of Indians the Government has provided the expense. It is one of the obligations of the guardianship Congress has exercised over their affairs. It is a privilege of that guardianship that permits the United States to designate their domicile, that warrants their removal from one section of the country where they have lived for centuries to a country new and strange to them, but this privilege carries with it the duty of seeing that adequate provision is made for the removal of a dependent and helpless people.

Although approximately 3,000 Mississippi Choctaws were to be removed, and the reports of the Dawes Commission showed that they were unable to remove themselves, Congress appropriated $20,000 for this purpose.

The railway fare from Meridian, Mississippi, was $19.50 apiece, or $58,500 for these Indians as a whole. The appropriation was largely expended in general expenses of the Government agents—travel, printing, etc.—with the result that the Government removed 269 individuals and created a deficit in the appropriation.

In the Winton case in the Court of Claims, in a deposition of Pat Chitto, one of the present claimants, given at Meridian on May 20, 1909, he states:

> "Q. Can you state any reason why you did not go out to the Indian Territory along with the other Mississippi Choctaws?
>
> "A. Yes, sir. Because I had received no notice from the agent of the Dawes Commission, who said the Government would take me to the Indian Territory. But I have not received the notice from the agent and I stayed and waited for the notice from the agent until some folks told me I had lost my rights.
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> * * * * * * *

"Q. Did you make any effort to go with any other person?

"A. I did not make any effort to go with anybody else because I was waiting on the Government.

"Q. Did the Dawes Commission or anybody in the office say anything to you about going with anybody else?

"A. They told me not to make any contract to go with anybody, because the Government would take me there without costing me anything."

In his cross-examination by George M. Anderson, of the Department of Justice, he testified:

"I made a contract with Charles F. Winton before the Dawes Commission came to Carthage, Miss. When the Dawes Commission came there I appeared before him, and he asked me if I had made any contract with anybody, and I told him yes, but he advised me not to go with the party I made the contract with, because the party I made contract with would take half of my lands, and half of all my folk's lands. The Dawes Commission told me that the Government would notify me, then take me out to the Indian Territory, but I have never got no notice from what he told me I would get it, only just the identification, they were all the papers I got.

* * * * * * *

"C. Q. Did any of your family make contracts with anybody?

"A. No, sir, only time—made contract with C. F. Winton.

* * * * * * *

"C. Q. As a matter of fact you never saw him again after you made the contract with him, did you?

"A. I saw him away after a while.

"C. Q. How long after?

"A. About six months after I saw him, but the Dawes Commission advised me not to go with him, so I met up with him and told him I would not go. I never told him about what the Dawes Commission told me, but I had made contract with C. F. Winton to give him half of my land to take me out there and supply me for one year.

"C. Q. Did he ever come to take you out there?

"A. No, sir, he never come because I told him I would not go. I told him that because the Dawes Commission told me the Government would take me out there without me giving them half my lands."

This witness says that there are about forty families of full-bloods living in his neighborhood and he can name but one other man who speaks English. The futility of printed notices to these Indians is apparent.

Second. The Legislation Now Pending.

A bill which has been introduced by Representative Harrison, of Mississippi, entitled "A bill to reopen the rolls of Choctaw-Chickasaw tribe and to provide for the awarding of the rights secured to certain persons by the 14th article of the treaty of Dancing Rabbit Creek, of date September 27, 1830," is reintroduced in the 63d Congress as H. R., 4536.

A bill identical with this has been introduced in the Senate by Senator Williams, Senate, 1840.

This bill is directed more particularly to the claims of persons seeking a forum for the determination of their identity as the descendants of Choctaws who remained in Mississippi under the stipulations of the 14th article. It does not contain any provisions of special application to the full-bloods and it should be amended so as to recognize the rights of the identified Mississippi Choctaws and provide necessary protection for the estate secured to full-bloods.

A bill prepared by the council was introduced by Mr. Powers as H. R. 8007. This bill embodies the provisions desired by the council, and we urge it as the measure best calculated to protect the interests of the identified full-bloods.

A bill, H. R. 7926, was introduced by Representative Stephens, the third subdivision of the first section of which directs the preparation of a special roll of full-blood Mis-

sissippi Choctaws identified by the Commission to the Five Civilized Tribes prior to March 4, 1907, as well as any full-blood who was not so identified. Section 2 of this bill provides that the persons so enrolled shall each receive $1,040.00 in full satisfaction of all claims. This bill is objected to because it does not provide an adequate amount or an adequate system of caring for these Indians and their funds and property.

Four days after introducing this bill Representative Stephens introduced H. R. 7974, entitled "A bill to adjust the final rolls and to settle the affairs of the Five Civilized Tribes in Oklahoma." This bill authorized the Secretary of the Interior to adjudicate the right to enrollment of the following persons:

First. Those whose names are on the so-called list of fifty-two or on the so-called Pollock list transmitted by the Secretary of the Interior February, 1912.

Second. The cases of all persons whose enrollment was directed by the Secretary within six months prior to March 4, 1907, but whose names do not appear on the final rolls. This bill also provides that Mississippi Choctaws so enrolled shall be entitled to all rights of other members of the Choctaw tribe enrolled under the second provision. *The passage of this bill would not provide for the settlement of the Mississippi Choctaw claims, because it would merely include the rights of a few individuals whose claims present special features.*

Representative Murray, of Oklahoma, has introduced a bill, H. R. 10066, "to purchase homes for the Mississippi Choctaws." This bill provides for a commission, one member of the Mississippi Choctaw Council, the president of the Board of Indian Commissioners, and one member to be selected by the President, to select and purchase lands in Mississippi for the use of the Mississippi Choctaws, the only

difference between this bill and that provided by the council being that it is not as comprehensive in its provisions and that the funds appropriated are proposed to be taken from the Federal Treasury instead of the funds of the Choctaw Nation.

In addition to these pending bills there are numerous provisions, Senate bill 278, House bills 3389, 3390, 10061, and House joint resolution 129, providing for the final settlement of the Choctaw property, or for per capita payments to the Choctaw and Chickasaw Nations, which would distribute the existing funds of these Indians to such an extent that it would be impossible to secure any fair settlement out of those funds for the Mississippi Choctaws, and for that reason the Mississippi Choctaws protest against the passage of these bills.

Third. Their Need for Legislative Action.

These claimants have been pressing their claim persistently since 1896, when a large number of them presented their claims to the Dawes Commission under the general act creating that commission. They have successfully prosecuted their claims for identification before the Dawes Commission in 1899 and greater part of them again in 1901, '2 and '3. A number of these Indians were kept in ignorance of the action of the Department in the final closing of the rolls, but discovering the situation they commenced the prosecution of these claims during the following year.

Their condition in Mississippi is such that at the present time they are greatly in need of relief. The failure of the cotton crops in that section during the last few years has made it impossible for them to properly sustain themselves; they are forced to cultivate land on shares and without necessary stock, implements, and aid. Since the removal of the Choctaws in 1903 more than ten years have elapsed. The Choctaws who removed to Oklahoma have not only received

valuable estates, but their children have been educated in the Indian schools and have learned to speak English, to read and write, and to properly protect and care for themselves and for their property. These Choctaws in Mississippi are growing up under the old conditions, their children uneducated, and their condition generally is deplorable.

Fourth. Approval of Contract.

1. The claim of the Mississippi Choctaws is contested by the Choctaw Nation, which is paying, with the approval of the Department, cash attorneys' fees and expenses in its effort to defeat their claims, and the failure of the Department to recognize our attorneys is a detriment—

a. In that it gives us no official, authoritative legal representation before Congress and the Department.

b. In that it may make it impossible for us to secure necessary legal services and expenses for properly presenting our claims.

2. The failure to approve our general contract makes it impossible to prevent the solicitation of individual contracts by other attorneys and agents. One or more attorneys, who have done and are doing nothing to advance our claims, are going about among the claimants soliciting contracts and the payment of cash fees of $2.50 from each individual. Another attorney has sent contracts to each identified Choctaw with a letter stating that it is an *additional* authorization required by a provision in the Indian appropriation act of 1913, when in fact he had no authorization at any time to represent them. By these means it is sought to exact money from them and to lay the foundation for large claims for contingent fees in the event their claims are recognized or a settlement is made with these claimants, and the inability of

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a great many of these Indians to speak English, and of practically all of them to read or write, renders them subject to imposition.

Very respectfully,

His
WESLEY x JOHNSON,
mark.

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